Written Testimony of the Honorable Cal Dooley
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I am Cal Dooley, President and CEO of the Grocery Manufacturers /Food Products Association. I am here today to discuss an issue of paramount importance to our members—ensuring the safety of imported foods.

Food producers have an abiding interest in safe food. Maintaining consumer confidence in our products, our brands, and our companies is the single most important goal of the food, beverage, and consumer packaged goods industry, and product safety is the foundation of consumer trust. My industry devotes enormous resources toward this goal, and effective regulation and oversight by federal regulatory agencies such as the FDA are critical and complementary elements of the fabric of consumer protection.

Last month, GMA/FPA issued "*Commitment to Consumers: The Four Pillars of Imported Food Safety*," a comprehensive proposal designed to protect consumers by strengthening, modernizing, and improving the system governing food imports. Our proposal envisions new mandatory requirements for the food industry to assure the adequacy of foreign supplier food safety programs and new responsibilities for FDA. Other elements include a new program to help identify and prioritize imports of potential concern, new efforts by FDA to help enhance the capacity of foreign governments to

prevent and detect food safety issues, improvements to FDA's scientific capabilities and its use of information technology, and a significant increase in FDA resources.

Underlying this comprehensive set of proposals is a fundamental emphasis on prevention.

Let me put the challenge before us in plain terms. As the volume of imported food steadily increases, the FDA's job at the border can be compared to trying to find a needle in a haystack. We need to approach this task from different angles: (1) by reducing the number of needles to find; and (2) by reducing the size of the haystack in which to find them.

I will take just a few minutes to briefly outline each of the four pillars for you now.

Pillar One: Mandatory Foreign Supplier Quality Assurance Program – Under this pillar, all U.S. importers of record would be obligated to adopt a foreign supplier quality assurance program that assures that all imported ingredients and products meet FDA food safety and quality requirements. As U.S. importers of record, companies, including GMA members, would utilize FDA guidance to adopt food safety programs and practices needed to ensure food safety, such as audits, testing, good manufacturing practices, good agricultural practices, HACCP plans, food defense programs, product management systems, and recall programs. Requiring importers of record to ensure the safety and quality of their supply chain – and giving FDA the authority to review the effectiveness of these programs – would reduce the number of needles in the haystack.

Pillar Two: Voluntary Qualified Importer Food Safety Program – To help prioritize FDA resources and to relieve congestion at ports, we further propose that U.S. importers of record who are able and willing to meet additional standards and conditions than those required under Pillar One could voluntarily participate in a program entitling them to expedited entry at U.S. borders. This is similar to the Safe and Secure Food Importation Program Chairman Dingell has proposed in the Food and Drug Import Safety Act introduced last month and builds upon the C-TPAT program currently in place. In addition to demonstrating the presence of well-designed and implemented food safety systems, importers could demonstrate a secure supply chain and conduct and share additional testing and program data with FDA to be eligible for expedited entry. By permitting expedited entry for imported foods that pose no meaningful risk, Congress can further reduce the size of the haystack needing closer scrutiny by the FDA.

Pillar Three: Build the Capacity of Foreign Governments – FDA would work with foreign governments to improve their capacity to prevent and detect threats to food safety. FDA would work with foreign governments to expand training, accelerate the development of laboratories, ensure the compliance of exports with U.S. regulations, permit appropriate FDA inspections of foreign facilities, and ensure adequate access to data and test results conducted abroad. In addition, FDA would be encouraged to use Codex to harmonize requirements among countries. The food industry has long supported international harmonization through Codex, and we believe that FDA must once again provide international leadership towards the adoption of strong, science-based

international food safety standards. All of these foreign capacity building steps would further reduce the likelihood of contamination and thereby further reduce the number of needles for FDA to find at the border.

Pillar Four: Expand the Capacity of FDA – Expanding FDA resources – including personnel, equipment, laboratory capacity, and scientific expertise – is an essential component of an effective food safety system. FDA resources have not kept pace with the demands posed by rising imports and current food safety challenges. To meet these needs, Congress must provide new funds to dramatically improve FDA's analytical testing capabilities, to increase and better target inspections conducted by FDA, to obtain real-time test results, and to enhance communications during crisis events. With additional resources that are well-deployed, FDA should be much better positioned to find any remaining needles before they cross the border and enter U.S. commerce.

We believe that the adoption of these four pillars of food safety will result in significant improvements in our food safety net. By focusing our efforts on prevention, and by leveraging the expertise and resources of the industry, we believe that our proposal will do far more to ensure the safety and quality of imported food products and ingredients than would the adoption of many of the legislative proposals pending before Congress, including the recently introduced Food and Drug Import Safety Act.

Food companies recognize that the growth of the global marketplace with increasing imports from many countries pose new challenges. We welcome the opportunity to work

with Congress to put in place comprehensive prevention-based measures to ensure the safety of imported foods and food ingredients.

Trade Commitments and Food Safety

I would like to take a moment to address an issue that has been raised recently regarding the impact of U.S. trade commitments on the ability of the U.S. to set and enforce food safety standards. Most immediately, this issue has been raised in the context of the U.S.-Peru Free Trade Agreement (FTA). In large measure, the FTAs entered into by the United States reconfirm each country's commitments under the WTO Sanitary and Phytosanitary Measures Agreement (SPS). As you know, the SPS Agreement does not limit, and in fact explicitly permits, a country's ability to establish measures to protect health and safety, as long as these measures are science-based, non-discriminatory, based on international standards and not merely intended to disrupt trade. And in fact, the SPS Agreement has been successful in creating a framework for food safety regulations.

FTAs do not impose any additional limitations on the U.S.' ability to implement standards and regulations to protect the food supply in our country and no provision of the FTAs limits the ability of the U.S. to set and enforce U.S. food safety standards. In fact, FTAs should be viewed as an important tool to build the capacity of foreign governments, to harmonize food safety standards, and to facilitate cooperation to improve current food safety regimes and ensure safer imports to the United States. In addition, the

trade negotiations themselves provide a great opportunity to address pending SPS issues between countries.

All food products entering the United States are required to meet the same food safety and quality standards as those products produced domestically. FTAs do not weaken U.S. food safety standards, prohibit the U.S. from imposing new science-based standards or prohibit the U.S. from enforcing border inspection measures on imported food products.

Legislative Proposals

Several proposals have been introduced in Congress to address the issue of imported food safety. We have reviewed these proposals, and I would like to take a moment to discuss the concerns that we have with some of these proposals. One of the proposals that seems to have generated great interest is the imposition of user fees on U.S. importers of food and food ingredients, including GMA members. While we would agree that inspecting products at the border is an important element of a comprehensive approach to food safety, we believe that inspections alone will not provide enough improvement to the safety of our food supply. We strongly agree with efforts to find more resources for FDA, which needs to restore its scientific base as well as its capacity to conduct an appropriate level of inspection and examination, and have urged Congress and the Administration to do so for the past several years. However, we strongly oppose the user fee proposals that

have been introduced in the House and Senate. We have five significant concerns with user fees.

We believe that the benefits of a safer food supply accrue to the public generally, much like the benefits of a strong national defense, and believe that the costs of providing FDA with sufficient resources to perform the various responsibilities to protect the public health that have been given to it by the Congress should come through general revenues, not user fees. As you know, a user fee is appropriate when the benefits of the government service flow to an individual (such as postage stamps, recreation fees, or public transportation) or to a particular business (such as harbor maintenance fees, accelerated review of prescription drugs, or bankruptcy filing fees). The benefits of inspection, effective science-based standards, and research and enforcement activities clearly flow to all Americans, not simply to food companies.

Second, the proposed user fees would impose significant financial burdens on U.S. companies, not just on importers. This is especially true for companies with facilities in both the U.S. and Canada, for example, where there is a steady flow of ingredients and finished products, all of which would be subject to import user fees. We are in the process of collecting data to estimate the added costs to U.S. businesses, but we have reason to believe they would be substantial.

Third, the imposition of user fees on imported products and ingredients could have the unintended consequence of encouraging companies to locate production facilities outside

the United States. Let me provide an example of why this is so. Suppose a company makes a product in the United States that consists of 20 ingredients, half of which are imported. Under the user fee proposal, a fee would be imposed on each one of those ten ingredients each time they are imported. If, on the other hand, the production facility was located in Mexico or Canada, for example, the fee would only be imposed once: when the finished product was brought into the United States.

Fourth, we are concerned that a user fee on imports would violate our trade commitments by creating a preference for domestic sources of food products and ingredients, violating our national treatment commitments. Finally, we are also concerned that such a fee could invite other countries to place similar fees on our food exports.

We strongly agree that FDA needs more resources to increase inspectors, improve its scientific capabilities, and meet other critical needs. For the past year, GMA/FPA has worked with the Coalition for a Stronger FDA to substantially increase FDA funding. In our view, FDA does not simply need "more" resources, but needs the "right" resources. In particular, we believe that the agency needs additional resources for both its "science" and its "compliance" activities. The agency cannot operate effectively without both. Our goal is to double FDA's food-related spending over five years.

We have serious concerns with other proposals that have been introduced in Congress, and I would like to highlight some of these today.

We are concerned that proposals to limit imports to certain ports and to require the development and implementation of certain tests could create havoc at the border and create costly and unachievable new burdens on FDA and the food industry. In particular, we are concerned that the proposal to limit food imports to ports of entry located in the same metropolitan area where FDA has a laboratory could unintentionally block food imports to many ports. While there are more than 300 ports of entry, there are only 13 FDA labs. As a result, many ports – including all ports in Texas and Florida – would no longer be able to import food products and ingredients. We believe a better course would be to expand and better target FDA inspectors, as we have proposed in our second "pillar" and Chairman Dingell has proposed in Section 7 of the Food and Drug Import Safety Act, and to expand FDA's capacity to quickly analyze food products and ingredients.

We are also concerned about new labeling requirements being proposed, such as in the Food and Drug Safety Act. These proposals appear to be redundant of current law in many respects, which already requires country of origin labeling for virtually all imported products, including packaged food. Moreover, Congress passed the Country of Origin Labeling Act of 2002 (COOL) to address some of the products that had been exempted from the broader statutory requirements. The recently House-passed Farm Bill includes provisions that will allow COOL to be implemented after several years of delay. We believe that current statutory requirements for country of origin labeling are sufficient and that proposals that would require specific ingredients to be labeled would be very

costly to implement and provide no safety benefit. Further, such steps could spur copy-cat measures in our export markets.

In addition, we are concerned that a requirement that all foreign facilities importing food into the U.S. obtain FDA certification would place enormous new burdens on FDA, would likely violate trade commitments on national treatment, and would invite reciprocal demands by our trading partners. Further, the cost of such a program, requiring FDA to certify products from nearly 150 countries, would be prohibitive, and unlikely to be funded adequately. We believe that there are much more cost effective ways to achieve the goals we all share.

In addition, proposals for mandatory recall authority seem to ignore the fact that the current recall system works well as food companies have powerful incentives to remove adulterated products from commerce as quickly as possible and have worked closely with FDA to implement recalls quickly and effectively.

Conclusion

In conclusion, we share your commitment to improving the safety of imported food. We are also committed to working for increased FDA resources, including resources to increase the ability to detect adulterated food at the border. However, we believe that far more emphasis must be placed on the prevention of threats to food safety throughout the supply chain and look forward to working with you to make a safe and secure supply

chain the responsibility of every importer of record and to expand the capacity of foreign governments to detect and deter threats to public health.

Our "Four Pillars" proposal builds on the long history of public-private responsibilities and cooperation in ensuring food safety, while providing new and innovative approaches to the latest challenges to our nation's food safety net. Its focus on prevention would be complemented by an enhanced ability to quickly detect and address public health threats. Meeting the challenges of the modern supply chain requires additional public resources for FDA and related agencies and demands an integrated approach that leverages the significant investment of the private sector in product safety. We look forward to working with the Committee to fashion a comprehensive solution that will address the new challenges posed by rising food imports and will continually improve the safety of our food products and ingredients.